

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALFREDO ARAGONEZ,

Petitioner,

v.

No. CV 19-238 KG/CG

RAUL TORREZ, *et al*,

Respondents.

ORDER TO CURE DEFICIENCIES

THIS MATTER is before the Court on Alfredo Aragonéz's *Pro se Petition for Writ of Habeas Corpus*, (Doc. 1), filed March 18, 2019. Aragonéz, an inmate at Penitentiary of New Mexico (PNM), contends he is not receiving credit towards his pretrial confinement. The Court determines the filing is deficient, for two reasons. First, Aragonéz failed to prepay the \$5 habeas filing fee or, alternatively, file a motion to proceed *in forma pauperis*. Second, it is not clear whether Aragonéz is attacking the criminal judgment or the prison's execution of that judgment. The petition states his pretrial confinement credits were "not showing on [a] good-time figuring sheet" from the Metropolitan Detention Center. (Doc. 1 at 6). However, an attachment to the petition indicates Aragonéz urged the state court to modify his judgment to reflect credit for his pretrial confinement. (Doc. 1 at 4).

Within thirty (30) days of entry of this Order, Aragonéz must address the filing fee and clarify his claims using the proper federal habeas form. If Aragonéz believes his sentence is correct, but the prison is improperly calculating the sentence, he must file a 28 U.S.C. § 2241 habeas petition. See *McIntosh v. U.S. Parole Comm'n*, 115 F.3d 809, 811 (10th Cir. 1997) ("Petitions under § 2241 are used to attack the execution of a

sentence.”). However, if Aragonez challenges the criminal sentence itself (*i.e.*, the state court improperly calculated his confinement time), he must file a 28 U.S.C. § 2254 habeas petition. *Id.* (Section “2254 habeas ... proceedings ... are used to collaterally attack the validity of a conviction and sentence”). The Court will direct the Clerk’s Office to send Aragonez both habeas forms along with an *in forma pauperis* application. The failure to timely comply with this Order will result in dismissal of this action without further notice.

IT IS ORDERED that by **Friday, May 24, 2019**, Aragonez shall: (1) refile and clarify his claims on the proper federal habeas form; and (2) either prepay the \$5.00 habeas filing fee or file an application to proceed *in forma pauperis*.

IT IS FURTHER ORDERED that the Clerk’s Office shall mail Aragonez a form § 2254 Petition; a form § 2241 Petition; and the form Application to Proceed *In Forma Pauperis*.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', written over a horizontal line.

THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE